



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-037]

Certain Biaxial Integral Geogrid Products from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Effective date: (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.)

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202.482.2593.

SUPPLEMENTARY INFORMATION:

The Petition

On January 13, 2016, the Department of Commerce (the “Department”) received a countervailing duty (“CVD”) petition concerning imports of certain biaxial integral geogrid products (“geogrids”) from the People’s Republic of China (“PRC”), filed in proper form by Tensar Corporation (“Petitioner”), a domestic producer of geogrids. The CVD petition was accompanied by an antidumping duty (“AD”) petition concerning imports of geogrids from the PRC.<sup>1</sup> On January 15, and January 21, 2016, the Department issued additional requests for information and clarification of certain areas of the Petition. Based on the Department’s

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<sup>1</sup> See the Petitions for the Imposition of Antidumping Duties and Countervailing Duties: Certain Biaxial Integral Geogrid Products from the People’s Republic of China, dated January 13, 2016 (“the Petition”).

requests, Petitioner timely filed additional information pertaining to the Petition on January 20, and 27, 2016.<sup>2</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the “Act”), Petitioner alleges that producers/exporters of geogrids in the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate.<sup>3</sup>

Furthermore, the Department has exercised its discretion to toll deadlines as a result of the closure of the Federal Government during Snowstorm “Jonas.”<sup>4</sup> Therefore, the initiation date for this investigation has been tolled by 4 business days.

#### Period of Investigation

The period of investigation (“POI”) is calendar year 2015, in accordance with 19 CFR 351.204(b)(2).

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<sup>2</sup> See Petitioner’s January 20 and 27, 2016, responses.

<sup>3</sup> See “Determination of Industry Support for the Petition” below.

<sup>4</sup> See Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm ‘Jonas,’” (January 27, 2016).

### Scope of the Investigation

The product covered by this investigation is geogrids from the PRC. For a full description of the scope of the investigation, *see* the “Scope of the Investigation” at the Appendix of this notice.

### Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from Petitioner to ensure that the proposed scope language is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department’s regulations<sup>5</sup>, we are setting aside a period for interested parties to raise issues regarding product coverage. If scope comments include factual information,<sup>6</sup> all such factual information should be limited to public information. The Department encourages all interested parties to submit such comments by 5:00 p.m. Eastern Time (“ET”) on February 29, 2016, which is 20 calendar days from the signature date of this notice.<sup>7</sup> Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 10, 2016, which is 10 calendar days after the initial comments.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the record of the concurrent AD investigation.

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<sup>5</sup> *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>6</sup> *See* 19 CFR 351.102(b)(21).

<sup>7</sup> The 20<sup>th</sup> day falls on February 28, 2016. As this is a Sunday, we are applying our Next Business Day Rule. *See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

### Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by the time and date set by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.

### Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the Government of China (GOC) of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD petition. The GOC did not accept our invitation to hold consultations before the initiation.<sup>8</sup>

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or

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<sup>8</sup> See Letter to Liu Fang, First Secretary, Embassy of the People's Republic of China, re: "Countervailing Duty Petition on Certain Biaxial Integral Geogrid Products from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated January 14, 2016.

opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,<sup>9</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>10</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

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<sup>9</sup> See section 771(10) of the Act.

<sup>10</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that geogrids, as defined in the scope, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.<sup>11</sup>

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in Appendix I of this notice. To establish industry support, Petitioner provided its own production of the domestic like product in 2015.<sup>12</sup> On February 1, 2016, we received a letter from the only other known U.S. producer of geogrids, Tenax Corporation (“Tenax”), stating that the company supports the Petition.<sup>13</sup> Tenax also provided its own production of the domestic like product in 2015.<sup>14</sup> Petitioner states that, based on reasonably available information regarding the U.S. geogrids industry, there are no other known producers of geogrids in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.<sup>15</sup>

Our review of the data provided in the Petition, General Issues Supplement, letters from Tenax, and other information readily available to the Department indicates that Petitioner has

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<sup>11</sup> For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Biaxial Integral Geogrid Products from the People’s Republic of China (“PRC CVD Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Biaxial Integral Geogrid Products from the People’s Republic of China (“Attachment II”). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>12</sup> *See* General Issues Supplement, at 13.

<sup>13</sup> *See* Letter from Tenax Corporation, dated January 28, 2016. We note that, although this letter is dated January 28, 2016, it was filed after 5:00 pm on January 29, 2016 (via ACCESS); therefore, we consider it received on the next business day (February 1, 2016).

<sup>14</sup> *See* Letter from Tenax Corporation, dated January 28, 2016.

<sup>15</sup> *See* Volume I of the Petition, at 2-15 and Exhibits I-1 through I-4, I-6 through I-34, I-44, and I-52 through I-58; *see also* Letter from Tenax Corporation, dated February 1, 2016, at 1.

established industry support.<sup>16</sup> First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>17</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>18</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>19</sup> Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.<sup>20</sup>

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure,

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<sup>16</sup> See PRC CVD Initiation Checklist, at Attachment II.

<sup>17</sup> See section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

<sup>18</sup> See PRC CVD Initiation Checklist, at Attachment II.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>21</sup>

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; negative impact on the domestic industry's performance, including capacity utilization, shipments, and operating income; and lost sales and revenues.<sup>22</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.<sup>23</sup>

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<sup>21</sup> See Volume I of the Petition, at 34 and Exhibit I-4; *see also* General Issues Supplement, at 19.

<sup>22</sup> See Volume I of the Petition, at 24-28, 32-45 and Exhibits I-4, I-35, I-39 through I-43, I-47, I-50, and I-51; *see also* General Issues Supplement, at 13-24 and Exhibits Supp. I-1 through I-5, I-10 through I-12, and I-43.

<sup>23</sup> See PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Biaxial Integral Geogrid Products from the People's Republic of China.



### Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the Petitioner supporting the allegations.

The Department has examined the Petition on geogrids from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of geogrids in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* the CVD Initiation Checklist which accompanies this notice.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 32 of the alleged programs, and part of two additional alleged programs. For six of the programs alleged by Petitioner, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the CVD Initiation Checklist.

### Respondent Selection

The Department normally selects respondents in a CVD investigation using CBP entry data. However, for this investigation, the HTSUS numbers the subject merchandise would enter under, 3926.90.9995, 3920.20.0050, and 3925.90.0000, are basket categories containing many products unrelated to geogrids, and much of the reported entry data do not contain quantity information. Therefore, we cannot rely on CBP entry data in selecting respondents. Instead, we intend to issue quantity and value (“Q&V”) questionnaires to each potential respondent, for

which the Petitioner has provided a complete address,<sup>24</sup> and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with the filing instructions on the Enforcement and Compliance website (<http://trade.gov/enforcement/news.asp>). Exporters and producers that do not receive Q&V questionnaires via mail may still submit a Q&V response, and can obtain a copy from the Enforcement and Compliance website. The Q&V questionnaire must be submitted by all PRC exporters/producers no later than February 22, 2016.

All Q&V responses must be filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS, by 5 p.m. ET by the date noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this *Federal Register* notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://enforcement.trade.gov/apo>.

#### Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), we have provided a copy of the public version of the Petition to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

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<sup>24</sup> See Volume I of the Petition at Exhibit I-37.

### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of geogrids from the PRC materially injure, or threaten material injury to, a U.S. industry.<sup>25</sup> A negative ITC determination will result in the investigation being terminated.<sup>26</sup> Otherwise, the investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

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<sup>25</sup> See section 703(a)(2) of the Act.

<sup>26</sup> See section 703(a)(1) of the Act.

### Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>27</sup> Parties are hereby reminded that the Department issued a final rule with respect to certification requirements, effective August 16, 2013, and that the revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any AD or CVD proceedings initiated on or after August 16, 2013, including this investigation, should use the formats for the revised

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<sup>27</sup> See section 782(b) of the Act.

certifications provided at the end of the *Certifications Final Rule*.<sup>28</sup> The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at <http://enforcement.trade.gov/apo/index.html>.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: February 8, 2016.

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Paul Piquado,  
Assistant Secretary  
for Enforcement and Compliance.

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<sup>28</sup> See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("*Certifications Final Rule*"); see also the frequently asked questions regarding the *Certifications Final Rule*, available at the following: [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

## **Appendix**

### **Scope of the Investigation**

The merchandise covered by the investigation is certain biaxial integral geogrid products. Biaxial integral geogrid products are a polymer grid or mesh material (whether or not finished, slit, cut-to-length, attached to woven or non-woven fabric or sheet material, or packaged) in which four-sided openings in the form of squares, rectangles, rhomboids, diamonds, or other four-sided figures predominate. The products covered have integral strands that have been stretched to induce molecular orientation into the material (as evidenced by the strands being thinner toward the middle between the junctions than at the junctions themselves) constituting the sides of the openings and integral junctions where the strands intersect. The scope includes products in which four-sided figures predominate whether or not they also contain additional strands intersecting the four-sided figures and whether or not the inside corners of the four-sided figures are rounded off or not sharp angles. As used herein, the term “integral” refers to strands and junctions that are homogenous with each other. The products covered have a tensile strength of greater than 5 kilonewtons per meter (“kN/m”) according to American Society for Testing and Materials (“ASTM”) Standard Test Method D6637/D6637M in any direction and average overall flexural stiffness of more than 100,000 milligram-centimeter according to the ASTM D7748/D7748M Standard Test Method for Flexural Rigidity of Geogrids, Geotextiles and Related Products, or other equivalent test method standards.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise further processed in a third country, including by trimming, slitting, coating, cutting, punching holes, stretching, attaching to woven or non-woven fabric or sheet material, or any other finishing, packaging, or other further processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the biaxial integral geogrid.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under the following subheading: 3926.90.9995. Subject merchandise may also enter under subheadings 3920.20.0050 and 3925.90.0000. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[FR Doc. 2016-03071 Filed: 2/12/2016 8:45 am; Publication Date: 2/16/2016]